PRIVY COUNCIL REPORT

UNION CARBIDE SINGAPORE PTE. LTD. v. COMPTROLLER OF INCOME TAX

[P.C. (Viscount Dilhorne, Lord Russell of Killowen and Lord Keith of Kinkel) March 15, 1979]
[Privy Council Appeal No. 27 of 1977]

Revenue Law — Income tax — Economic expansion incentives — Exemption of export profits — Computation of exempt income — Whether capital allowances should be deducted in arriving at exempt profit — Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 135), ss. 30 and 32.

This was an appeal from the decision of the Court of Appeal of Singapore (reported at [1976] 2 M.L.J. 150). The appellant company was recognised as an export enterprise and was therefore exempt from income tax in respect of a part of their export profits. The Comptroller of Income Tax contended that from the amount of export profits which would qualify for exemption from tax must be deducted the capital allowances and it was only the balance which was exempt from tax. This contention was upheld in the Income Tax Board of Review and in the High Court and the Court of Appeal. The appellants contended that the amount of export profits which were exempt from tax was not affected by the fact that they were entitled to capital allowances.

Held, allowing the appeal: (1) section 30(1) of the Economic Expansion Incentives (Relief from Income Tax) Act, made it clear that an export enterprise might be entitled to both its full capital allowances and to have some part of its export profits exempted from tax without one affecting the other;

(2) the section did not therefore require any deduction to be made from the export profit which qualified for relief.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Michael Nolan Q.C. (*Lim Chor Pee* with him) for the appellants.

Charles Potter Q.C. (*James Chia* with him) for the respondent.

Cur. Adv. Vult.

Viscount Dilhorne (delivering the judgment of the Board): The Income Tax Act of Singapore enables capital allowances in certain circumstances to be made to a taxpayer. The Economic Expansion Incentives (Relief from Income Tax) Act of 1967 provides, *inter alia*, for the exemption from tax of a part of the export profits of a company which has been approved by the Minister as an export enterprise and issued with an export enterprise certificate.

The appellants have been recognised as an export enterprise and it is not disputed that they have export profits, a part of which by virtue of the Economic Expansion Incentives Act is exempt from tax. In the year of assessment in which a part of their export profits are exempt from tax, they are also entitled to capital allowances.

The respondent contends that there is an interaction between the relief given by way of capital allowances and that given by the exemption of export profits. He says that from the amount of export profits which but for entitlement to capital allowances would qualify for exemption from tax, there falls to be deducted a part of the capital allowances. He contends that capital allowances are normally deducted rateably from all parts of the income of a single trade and so there falls to be deducted from the export profits which would, if there was no entitlement to capital allowances, qualify for exemption, a rateable part of the capital allowances with the consequence that the taxpayer entitled to such allowances will not get all the allowances to which he would be entitled if there were no export profits and will not get the amount of export profits exempted from tax which he would have got if not entitled to capital allowances.

The appellants contend that their right to capital allowances is not affected by the fact that they are entitled to have some export profits exempted from tax and that the amount of export profits which are exempt from tax is not affected by the fact that they are entitled to capital allowances.

On this issue, which is the only issue to be determined in this appeal, Chua J. and the Court of Appeal found in favour of the respondent. Whether or not they were right to do so depends on the construction to be placed on provisions of the Income Tax Act and of the Economic Expansion Incentives Act.

No authority was cited for the proposition that capital allowances are normally deductible rateably from all parts of the income of a single trade and the first question for consideration is whether the terms of the Income Tax Act require that to be done.

That Act provides for the deduction of capital allowances in respect of capital expenditure on the construction of a building or structure which is to be an industrial building occupied for the purposes of a trade (section 16), in respect of capital expenditure on a plantation (section 18A) and in respect of capital expenditure on machinery or plant for the purposes of a trade, profession or business (section 19).

Section 23 of the Act provides that if full effect cannot, by reason of an insufficiency of gains or profits chargeable for a year of assessment, be given to any capital allowance to which the taxpayer is entitled in that year

> "then, so long as the person entitled thereto continues to carry on the trade, profession or business in respect of the gains or profits of which the allowance falls to be made, the balance of the allowance shall be added to, and be deemed to form part of, the corresponding allowance, if any, for the next succeeding year of assessment, and, if no such corresponding allowance falls to be made for that year, shall be deemed to constitute the corresponding allowance for that year, and so on for subsequent years of assessment."

The capital allowances are in respect of capital expenditure and there is no provision in the Act which either expressly or impliedly supports the contention that such allowances to which the taxpayer is entitled are to be deducted rateably from all parts of the income from a single trade. Just as outgoings and expenses can under section 14 be deducted for the purpose of ascertaining the income of a person from any source chargeable with tax, so the capital allowances to which a person is entitled are deductible in ascertaining the gains or profits chargeable to tax. The expenses and outgoings are not deducted rateably from the gains or profits and in their Lordships' opinion neither are capital allowances.

Under the Economic Expansion Incentives Act, "pioneer industries", "expanding enterprises" and "export enterprises" may secure some exemption from tax. The Minister may declare that an industry is a pioneer industry or an expanding industry or approve a company which is manufacturing or which proposes

to manufacture any export product as an export enterprise.

As originally enacted the income of a pioneer industry and of an expanding enterprise was to be ascertained without making any deductions for capital allowances but the Act was amended and it is now provided that such allowances are to be deducted in computing their income (sections 10, 20). In the case of a pioneer industry, if in any particular year full effect cannot be given to the capital allowances, the balance of the allowances is to be carried forward (section 10(1)) and, if certain conditions are satisfied, capital expenditure incurred by a pioneer industry is, for the purpose of capital allowances, to be deemed to have been incurred immediately after the tax relief period of the industry has ended.

The Act, however, was not amended so as to require capital allowances to be deducted from the income of an export enterprise in respect of the trade or business to which its export enterprise certificate relates. By section 30(1) it is enacted that capital allowances shall not be deducted in computing its export profits.

The total export profits of such an enterprise are deemed to be that part of its income which bears the same proportion to that income as the total value of the export sales (f.o.b.) of its export product bears to its total sales as defined (section 30(2)).

Only the excess of its export profit so determined over a fixed sum qualifies for relief from taxation (section 30(3)).

Section 32 of the Act reads as follows: —

"(1) Where any amount of export profit qualifies under sections 30 and 31 of this Act for the relief provided by this section, any deductions which may fall to be made under any of the provisions of sections 16, 17, 18, 19, 19A, 20, 21 and 22 of the Income Tax Act shall be made for any year of assessment in respect of which such increased export profit would have formed part of the statutory income of the export enterprise save for the provisions of this Part of this Act.

(2) For each year of assessment the Comptroller shall issue to the export enterprise a statement showing the balance of the export profit for the year of assessment and the provisions of Parts XI and XII of the Income Tax Act (relating to objections and appeals) and of any rules made thereunder apply, mutatis mutandis, as if such a statement were a notice of assessment given under those provisions.

(3) Subject to subsection (6) of section 33 of this Act, where any statement issued under subsection (2) of this section has become final and conclusive an amount equal to ninety per cent of the balance of such export profit shall not form part of the statutory income of the export enterprise for that year of assessment but shall be exempt from tax."

It is not easy to discern why subsection (1) was enacted for there is no provision in this Part of the Act which deprives a taxpayer of the capital allowances to which he is entitled under the sections of the Income Tax Act referred to in this subsection. In the absence of any such provision the capital allowances to which he is entitled in a year of assessment will be deductible in computing his statutory income for that year whether or not there was any increased export profit exempt from tax in that year. It may be that as section 30(1) required capital allowances to be disregarded in the computation of export profits and as, in relation to pioneer industries, the right to capital allowances may be postponed until after the tax relief period, it was thought desirable *ex abundanti cautela* to make it clear that when an amount of export profit qualified for relief, the taxpayer's right to capital allowances in that year was not affected.

Whatever was the reason for the enactment of this subsection, effect can only be given to its language. That language is clear and unambiguous. The subsection provides that any deductions which may fall to be made for capital allowances shall be made, not that part of the capital allowances, a rateable part attributable to the export profits, is to be deducted.

Their Lordships do not find it possible so to read the subsection as to hold that it requires such a rateable portion, and only such a portion, to be deducted. The totality of the capital allowances for that year must be deducted, and the subsection does not stipulate that that must be done in any different way to that in which it is done under the provisions referred to in the subsection.

Bearing in mind that it is only the excess of export profits over a fixed sum which qualifies for relief and, by virtue of section 32(3), only 90% of the excess which is exempted from tax, there will be an amount of gains or profits from which capital allowances can be deducted and if full effect cannot be given in one year to the allowances, the balance can be carried forward by virtue of section 23 of the Income Tax Act to a following year.

Subsection (1) makes it clear that, unlike a pioneer industry and an expanding industry, an export enterprise may be entitled to both its full capital allowances and to have some part of its export profits exempted from tax without one affecting the other.

Considerable reliance was placed by the respondent on the requirement in section 32(2) that the Comptroller is to issue to the export enterprise a statement "showing the balance of the export profit for that year of assessment". The change of language from that used in subsection (1) indicated, it was urged, that balance of export profit meant something other than the amount of export profit qualifying for relief and so lent support to the contention that subsection (1) required some deduction to be made from the export profit which qualified for relief. This argument would have weight if the language of subsection (1) required any such deduction to be made. If that had been intended, it could easily have been expressed. It has not been.

Holding as they do that subsection (1) does not require any deduction to be made from the export profit which qualifies for relief, their Lordships are of opinion that the "balance of the export profit" referred to in subsection (2) can only refer to the balance left after the calculations required by section 30 have been made.

Four years of assessment (1968 to 1971) were under appeal but it was agreed that only the appeal relating to the assessment for 1968 should be heard as the decision on that appeal would apply to the other appeals.

Their Lordships will allow this appeal and set aside the assessment made on the appellants for the year 1968. The respondent must pay the costs of this appeal as well as the costs before both courts below and before the Board of Review.

Appeal allowed.

Solicitors: *Douglas Goldberg & Co.; Charles Russell & Co.*